



September 11, 2002

Mr. Craig H. Smith
Deputy General Counsel
Texas Workers' Compensation Commission
4000 South IH-35, MS-4D
Austin, Texas 78704-7491

OR2002-5063

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168433.

The Texas Workers' Compensation Commission (the "commission") received a request for copies of information pertaining to a specified file.¹ You state that you do not maintain information that is responsive to subsection (a) of the request.² You claim that the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that the information at issue is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code.³ Section 402.092(a) provides that information maintained in the investigative files of the commission is confidential and may not be disclosed except in limited circumstances

¹ We note that, because we are unable to read the request, we are relying on your characterization of it as a request for copies of information pertaining to a specified file.

² We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990).

³ Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes.

which are not applicable in this instance. *See* Labor Code § 402.092(a). An “investigative file” is “any information compiled or maintained by the commission with respect to a commission investigation authorized by law.” *Id.* § 402.092(d). Section 414.005 of the Labor Code provides that the commission’s Compliance and Practices Division (the “division”) shall maintain an investigation unit for the purpose of conducting investigations relating to alleged violations of the Texas Workers’ Compensation Act (the “Act”) and commission administrative rules. *See* Labor Code § 414.005; *see also* §§ 414.001, .002.

You state that the information at issue is a division criminal investigation file which concerns suspected violations of the Act. We note that the Act clearly gives the division the authority to investigate any alleged violation of subtitle A of the Act. We also note that the file at issue contains information concerning an employer injury report or occupational disease report. However, you do not inform us that any of this information constitutes information that is in or derived from a claim file for purposes of section 402.092(c) of the Labor Code. Based on our review of your arguments and the information at issue, we, thus, conclude that the information at issue is confidential under section 402.092(a) of the Labor Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code. Because we base our ruling on section 552.101, we need not address your other claimed exception to disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report

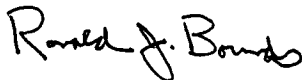
that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 168433

Enc. Submitted documents

cc: Mr. Lee Roy Pelmore
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(w/o enclosures)